

## **REMARKS**

The Office Action dated June 17, 2003 has been carefully reviewed and the forgoing amendments are made in response thereto. Applicants respectfully submit that no prohibited new matter has been introduced by the foregoing amendments. Claims 12-27 are pending before the Examiner for examination. Claims 12-21 have been canceled, claims 28-36 have been added, and claim 22 has been amended. Support for the amended claims can be found throughout the specification and in the original claims. Specifically, support for amended claim 22 can be found on page 2, line 30, to page 4, line 2. Support for new claim 28 can be found on page 5, lines 16-34. New claims 32-36 are supported on page 1, lines 1-5 and 32-35, and on page 2, lines 9-11. Canceled claims 19, 25 and 26 have been rewritten as new claims 29, 30 and 31, which depend from claim 28, so that they do not depend from a canceled claim.

In view of these amendments and the following remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Applicants note and appreciate the Examiner's statement that claims 22-24 are free of the prior art.

### **I. Summary of the Office Action**

1. The Office Action rejected claims 12-27 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement.
2. The Office Action rejected claims 12-16 under 35 U.S.C. §102(b) as being anticipated by, or in the alternative, under 35 U.S.C. §103(a) as obvious over Speck *et al.* (Cultured Dairy Products Journal, Nov. 1983).
3. The Office Action rejected claims 17-21 and 25-27 under 35 U.S.C. §103(a) as being unpatentable over Kosikowski (J. Food Protection, vol. 44, Nov. 1981) in view of Henson *et al.* (US Patent No. 4,228,189).

### **II. Response to the Office Action**

#### **Rejections under 35 U.S.C. §112, first paragraph**

The Office Action alleges that claims 12-27 are not enabled for reciting a product that "has not been frozen." Respectfully, claims 12-16 have been canceled, and claims 17-27 do not

recite a product that has not been frozen. New claims 28-36 also do not recite a product that has not been frozen. Accordingly, these rejections are moot, and Applicants request that they be withdrawn.

Rejections under 35 U.S.C. §102(b) or 35 U.S.C. §103(a)

The Office Action alleges that claims 12-16 are anticipated by, or in the alternative, obvious over Speck *et al.* (Cultured Dairy Products Journal, Nov. 1983). Claims 12-16 have been canceled, rendering these rejections moot. Applicants, therefore, respectfully request that these rejections be withdrawn.

Rejection under 35 U.S.C. §103(a)

The Office Action alleges that claims 17-21 and 25-27 are unpatentable over Kosikowski in view of Henson *et al.* The Office Action also acknowledges that claim 22, and its dependent claims 23 and 24, are free of the prior art. Respectfully, claim 17, and its dependent claims 18-21 and 25-26, as well as claim 27 have been canceled. The limitations in claim 17 of reducing the buffering capacity of a milk fermentation starting material, fermenting the material with a lactic acid fermenting agent, and admixing a warm-flavour preparation have been incorporated into new claim 28, which depends from claim 22. As a result, claim 28, and its dependent claims 29-36, are not unpatentable over the cited art. Because the cited references do not render Applicants' claimed invention obvious, Applicants request that these rejections be withdrawn.

**CONCLUSION**

In view of the foregoing remarks, the Applicants respectfully request withdrawal of all outstanding rejections and early notice of allowance to that effect. A favorable action is awaited. Should the Examiner find that an interview would be helpful to further prosecution of this application, she is invited to telephone the undersigned at her convenience.

**Except** for fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This

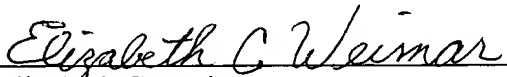
paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME**  
in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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